

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

Item No. 7

Doc. No. 2

TENTATIVE ORDER NO. R9-2004-0028
ADMINISTRATIVE ASSESSMENT OF CIVIL LIABILITY
FOR
MANDATORY MINIMUM PENALTIES
AGAINST
FIFTH AVENUE CONDOS, LLC
TRELLIS PROJECT
VIOLATION
OF
ORDER NO. R9-2000-0090, NPDES NO. CAG919001
GENERAL WASTE DISCHARGE REQUIREMENTS FOR
TEMPORARY GROUNDWATER EXTRACTION & SIMILAR WASTE DISCHARGES TO
SAN DIEGO BAY & STORM DRAINS OR OTHER CONVEYANCE SYSTEMS
TRIBUTARY THERETO

The San Diego Regional Water Quality Control Board (hereafter Regional Board), on February 11, 2004, having received a signed waiver of public hearing form with a \$6,000 check and having reviewed the allegations contained in Complaint No. R9-2003-0375, dated October 15, 2003, and on the recommendation for administrative assessment of Civil Liability pursuant to California Water Code section 13385 in the amount of \$6,000 finds as follows:

1. Fifth Avenue Condos, LLC is the developer of the Trellis Project, a 149 unit condominium homes with an underground parking garage, landscaped lobby courtyard, and common entertainment courtyard. The Trellis Project is located at K Street between 5th and 6th Avenues in the historic Gaslamp District of downtown San Diego. Fifth Avenue Condos, LLC is authorized pursuant to Order No. R9-2000-0090 to discharge groundwater to San Diego Bay, but not to exceed 288,000 gallons per day. Order No. R9-2000-0090 was adopted on June 14, 2000. On December 20, 2002 the Regional Board received an application from Fifth Avenue Condos, LLC as well as a check for \$1,000. On January 23, 2003, the Regional Board enrolled Fifth Avenue Condos, LLC under Order No. R9-2000-0090 to temporarily discharge groundwater dewatering until the underground parking structure is completed.
2. The Discharge Specifications' section of Order No. R9-2000-0090 states that the Total Suspended Solids Instantaneous Maximum is 50 mg/L. The May 2003 Trellis Project monitoring report indicated a Total Suspended Solids result of 79 mg/L, 58% greater than the Instantaneous Maximum Discharge Specification.
3. The Discharge Specifications' section of Order No. R9-2000-0090 states the Total Suspended Solids 30-day Average is 30 mg/L. The May 2003 Trellis Project monitoring report indicated a Total Suspended Solids 30-day Average for May 2003 is 79 mg/L, 163% greater than the 30-day Average Discharge Specification.

4. Water Code Section 13385(h)(2) states that a “serious violation” means any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 20 percent or more or for a Group I pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 40 percent or more. Total Suspended Solids is a Group 1 pollutant. Therefore, both violations meet the criteria to be classified as serious violations.
5. Water Code Section 13385(h)(1) requires the Regional Board to assess a mandatory penalty of three thousand dollars (\$3,000) for each serious violation. Under Water Code section 13385(h) the amount of the mandatory minimum penalty that must be assessed is \$6,000 for the two serious violations.
6. Consideration of the factors prescribed in California Water Code Section 13385(e) based upon information available to the Regional Board supports assessment of civil liability pursuant to Water Code section 13385(i) in the amount of \$6,000.
7. The Regional Board incurred costs totaling \$2,880, to prosecute this enforcement action; the costs include investigation, preparation of enforcement documents, communication with the Discharger, and preparation of materials for public review and hearing.
8. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 21000 et seq.) in accordance with Section 15321, Chapter 3, Title 14, California Code of Regulations.

IT IS HEREBY ORDERED that pursuant to section 13385 of the California Water Code, civil liability is imposed on Fifth Avenue Condos, LLC in the amount of six thousand dollars (\$6,000).

I, John H. Robertus, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order imposing civil liability assessed by the California Regional Water Quality Control Board, San Diego Region, on February 11, 2004.

Tentative

JOHN H. ROBERTUS
Executive Officer